IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.49 of 2000.

Judgement reserved on: 9.8.2007

Date of decision: 10.8.2007.

State of H.P. **…….Appellant**

Vs.

Hukam Chand and another **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the Appellant : **Mr. Ashok Chaudhary, Addl. Advocate General.**

For the Respondent : **Mr.Ashok Sharma, Advocate.**

Kuldip Singh, Judge.

The State is in appeal against the acquittal of respondents by learned Addl. Chief Judicial Magistrate, Court No.1, Una on 14.9.1999 in case No.92-1-92.

The facts in brief are that constable Surinder Singh and constable Manoj Kumar were on duty on 22.1.1992 at about 1.30. P.M. at Tahliwal barrier, a truck bearing No.HIB-740 loaded with bamboos came from Santokhgarh side and was stopped at the barrier. The permit was asked from the accused persons who could not produce any permit for carrying the bamboos. Kishan Chand was driving the truck, during the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

pendency of the case, he died. Hukam Chand and Duni Chand respondents were the occupants of the said truck. On the basis of statement under Section 154 Cr.P.C. of constable Surinder Singh an FIR No.33/92 was registered. After completion of the investigation challan was put up in the Court. Learned Addl. Chief Judicial Magistrate acquitted the respondents on 14.9.1999. The State is thus in appeal.

2. I have heard the learned counsel for the parties and gone through the record. Learned Addl. Advocate General has submitted that the permit Ex.PW-3/A for transportation of the bamboos in question had expired on 20.1.1992 but the truck No.HIB-740 on checking was found carrying bamboos on 22.1.1992. The learned Addl. Chief Judicial Magistrate has misconstrued the material on record and has erred in acquitting the respondents. The learned counsel for the respondents has supported the impugned judgment and has submitted that the truck loaded with bamboos was struck up in Swan river on 20.1.1992 and it was checked on 22.1.1992 at that place and was found loaded with Bamboos at that place. The truck was not apprehended at Tahliwal Barrier. On 22.1.1992 bamboos were not in transit nor those were being transported.

3. PW-1 Surinder Kumar has stated that on 22.1.1992 he was present in his shop at Tahliwal Barrier which was adjacent to check post. The truck No.HIU- 440 was checked by constable Surinder Singh in presence of Paul Singh and he was also present at that time. The truck was being driven by Kishan Chand and the two accused were sitting in the truck. The truck was loaded with bamboos. The occupants of the

truck did not produce any papers for transportation of the bamboos. In cross-examination he has stated that he was called by the police from shop.

4. PW-2 Manoj Kumar constable has stated that on 22.1.1992 he was on duty at Tahliwal Barrier. Surinder Kumar constable was also on duty at that time. The truck No.HIU-740 was checked at the barrier. The truck was loaded with bamboos. At the time of checking Surinder Kumar Pardhan and Paul Singh were present. Kishan Chand was the driver of the truck and the other persons in the truck were Hukam Chand and Duni Chand. In cross examination he has admitted that during those days the main road was under repair and the vehicles used to cross Swan river. He has denied that the truck was struck up in Swan river due to break down and DSP apprehended the truck in the river.

5. PW-1 Surinder Kumar has not stated that PW-2 Manoj Kumar was present at the time of checking of the truck at Tahliwal barrier. PW-1 has given the truck No.HIU-440 whereas PW-2 has given truck No.HIU 740. PW-2 Manoj Kumar has stated that another constable Surinder Kumar and Paul Singh were also present at the barrier but that Surinder Kumar constable and Paul Singh were not examined. PW-1 Surinder Kumar claims to have his shop adjacent to check post but perusal of site plan Ex.PW-5/B would show that shop of PW-1 Surinder Kumar is not near to barrier or otherwise in the vicinity.

6. No doubt the permit Ex.PW-3/A was valid upto 20.1.1992. The stand of the respondents is that infact they were carrying bamboos on 20.1.1992 in the truck but unfortunately the truck struck up in Swan

river. The police apprehended the truck on 22.1.1992 when the truck loaded with bamboos was in the Swan river. The bamboos were not in transit or in the process of transportation when the truck was apprehended and therefore, the respondents have not committed offence under Section 41, 42 of the Indian Forest Act . He has relied judgment Arjun Singh and others vs. State of H.P. [2002 (3) SLC. 282], in which this Court after relying Prem Kumar Malik vs. State of Himachal Pradesh [2002(2) SLC 520], has held that Section 42, Indian Forest Act, is not attracted if the forest produce is not shown to have been seized while in transit.

7. The prosecution has not proved beyond reasonable doubt that the truck was apprehended at Tahliwal barrier. The presence of PW-1 Surinder Kumar at the time of checking of the truck is doubtful. He has given wrong truck number nor he has stated that PW-2 constable Manoj Kumar was present at the time of checking of the truck. His shop has not been shown in the site plan Ex.PW-5/B. Surinder Kumar constable and Paul Singh were not examined by the prosecution. In these circumstances, it is not safe to rely on the uncorroborated testimony of PW-2 Manoj Kumar constable. The learned Addl. Chief Judicial Magistrate has taken a possible view from the material on record. No case for interference is made out. The appeal is dismissed.

(Kuldip Singh)
Judge.

August 10, 2007
(sks)